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Supreme Court, U.S.
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No._____

IN THE SUPREME COURT OF THE UNITED STATES of AMERICA

ON PETITON FOR A WRIT OF CERTIORARI FROM THE SEVENTH CIRCUIT COURT OF APPEALS, USAP7 No. 05-1105

Petitioners,

Glenn J. Hopkins, DBA Galaxy Innovative Technology, on behalf of those similarly situated,

VS

Respondents,

The State of Illinois, Secretary of State Jesse White, State Farm Mutual Automobile Insurance Company, unknown businesses engaged in the business of Insurance within and without the State of Illinois, and the estate of Leroy Neff,

For Petitioners:

William Shaffer,
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QUESTIONS PRESENTED

I.

As to whether or not this Court will resolve a conflict between the 7th Circuit Court of Appeals, the 11th Circuit Court of Appeals, and this U.S. Supreme Court's prior policy that "Due process requires notice with time to respond" that is established in re Gault, 387 U.S. 1, (1967), in light of (1) as to whether or not a denial of due process by a District Court is of itself proper grounds for rule 60 relief; and (2) that a remedy under rule 60 should be available when notice of the Courts judgment creating that denial of due process is delayed in receipt past the 10 days allowed for post trial motions under rule 59; and (3) should this Court in the alternative modify the practice rule to be requiring that the tolling of the ten days begins upon verified receipt so as to actually give the recipient 10 days to respond as a matter of due process of law?

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II.

As to whether or not when a District Court modifies a final judgment due to clear due process grounds that are established by a Petition for relief, the resulting judgment thereafter constitutes a new "final judgment", and thus was the Seventh Judicial Circuit Court of Appeals in error to limit the review of that "final judgment" to just abuse of discretion based on grounds these issues "of having been denied due process" should instead have been raised by direct appeal under Bell v Eastman Kodak Co. 214 F.3d 932,934 (7th Circuit 2000), and was Hopkins denied due process of law in re Powell v Alabama, 287 U.S. 45 (1932) by the Appeals Court refusing to treat this modified judgment as a final judgment?

III.

As to whether or not the Seventh Judicial Circuit Court of Appeals invalidates the intent and purpose of Federal rule 60 as was defined by this U.S. Supreme Court in re California Motor Transport 404 U.S. 512-513, when the Seventh Judicial Circuit Court of Appeals stated Hopkins had not stated proper grounds for relief in this appeal of the district Courts judgment because misrepresentation that created a fraud upon the Court was an issue that could be directly appealed, and thus cannot be raised by a petition under rule 60, based on Bell v Eastman Kodak Co. 214 F.3d 932,934 (7th Circuit 2000). Was the Court in error to overrule this U.S. Supreme Court's Decision in re California Motor Transport?

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There is a conflict between the Circuit Courts of Appeal and with this Court as to what constitutes proper grounds for relief under federal rule 60, raising 1st amendment issues as to whether or not a fraud upon the court and denial of due process by a District Court is proper grounds for relief, and whether or not a District Courts change of its judgment after a Petition for relief raised a denial of due process issue constitutes a new judgment which can be reviewed by normal appellate review.

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Statutes in question:

Sherman Anti-Trust Act, 15 U.S.C. § 1.

"Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a felony." 26 Stat. 209, as amended, 15 U.S.C. 1.

15 U.S.C. § 2. *Monopolizing trade a felony; penalty* Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding $10,000,000 if a corporation, or, if any other person, $350,000, or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court.

15 U.S.C. § 26. *Injunctive relief for private parties; exception; costs*: Any person, firm, corporation, or association shall be entitled to sue for and have injunctive relief, in any court of the United States having jurisdiction over the parties, against threatened loss or damage by a violation of the antitrust laws, including sections 13, 14, 18, and 19 of this title, when and under the same conditions and principles as injunctive relief against threatened conduct that will cause loss or damage is granted by courts of equity, under the rules governing such proceedings, and upon the execution of proper bond against damages for an injunction improvidently granted and a showing that the danger of irreparable loss or damage is immediate, a preliminary injunction may issue: Provided, That nothing herein contained shall be construed to entitle any person, firm, corporation, or association, except the United States, to bring suit for injunctive relief against any common carrier subject to the jurisdiction of the Surface Transportation Board under subtitle IV of title 49. In any action under this section in which the plaintiff substantially prevails, the court shall award the cost of suit, including a reasonable attorney's fee, to such plaintiff.

The McCarran Ferguson Act 15 U.S.C. § 1011. *Declaration of policy*

Congress hereby declares that the continued regulation and taxation by the several States of the business of insurance is in the public interest, and that silence on the part of the Congress shall not be construed to impose any barrier to the regulation or taxation of such business by the several States.

The McCarran Ferguson Act 15 U.S.C. § 1012 Regulation by State law; Federal law relating specifically to insurance; applicability of certain Federal laws after June 30, 1948

(a) State regulation; The business of insurance, and every person engaged therein, shall be subject to the laws of the several States which relate to the regulation or taxation of such business.

(b) Federal regulation; No Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance, or which imposes a fee or tax upon such business, unless such Act specifically relates to the business of insurance: Provided, That after June 30, 1948, the Act of July 2, 1890, as amended, known as

the Sherman Act, and the Act of October 15, 1914, as amended, known as the Clayton Act, and the Act of September 26, 1914, known as the Federal Trade Commission Act, as amended (15 U.S.C. 41 et seq.), shall be applicable to the business of insurance to the extent that such business is not regulated by State Law.

The McCarran Ferguson Act 15 U.S.C. § 1013. Suspension until June 30, 1948, of application of certain Federal laws; Sherman Act applicable to agreements to, or acts of, boycott, coercion, or intimidation;

(a) Until June 30, 1948, the Act of July 2, 1890, as amended, known as the Sherman Act, and the Act of October 15, 1914, as amended, known as the Clayton Act, and the Act of September 26, 1914, known as the Federal Trade Commission Act (15 U.S.C. 41 et seq.), and the Act of June 19, 1936, known as the Robinson-Patman Anti-Discrimination Act, shall not apply to the business of insurance or to acts in the conduct thereof. (b) Nothing contained in this chapter shall render the said Sherman Act inapplicable to any agreement to boycott, coerce, or intimidate, or act of boycott, coercion, or intimidation.

The Rico Act, 18-USC-§ 1962:

(c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

15-USC-§ 3905 Clarification concerning permissible State authority; (a) No exemption from State motor vehicle no-fault and motor vehicle financial responsibility laws Nothing in this chapter shall be construed to exempt a risk retention group or purchasing group authorized under this chapter from the policy form or coverage requirements of any State motor vehicle no-fault or motor vehicle financial responsibility insurance law. (b) Applicability of exemptions; The exemptions provided under this chapter shall apply only to the provision of liability insurance by a risk retention group or the purchase of liability insurance by a purchasing group, and nothing in this chapter shall be construed to permit the provision or purchase of any other line of insurance by any such group. (c) Prohibited insurance policy coverage: The terms of any insurance policy provided by a risk retention group

or purchased by a purchasing group shall not provide or be construed to provide insurance

policy coverage prohibited generally by State statute or declared unlawful by the highest court of the State whose law applies to such policy.

(d) State authority to specify acceptable means of demonstrating financial responsibility: Subject to the provisions of section 3902(a)(4) of this title relating to discrimination, nothing in this chapter shall be construed to preempt the authority of a State to specify acceptable means of demonstrating financial responsibility where the State has required a demonstration of financial responsibility as a condition for obtaining a license or permit to undertake specified activities. Such means may include or exclude insurance coverage obtained from an admitted insurance company, an excess lines company, a risk retention group, or any other source regardless of whether coverage is obtained directly from an insurance company or through a broker, agent, purchasing group, or any other person.

215 ILCS 5 421. Declaration of purpose.

The purpose of this article is to regulate trade practices in the business of insurance in accordance with the intent of Congress as expressed in the Act of Congress of March 9, 1945 (Public Law 15, 79th Congress), by defining, or providing for the determination of, all such practices in this State which constitute unfair

methods of competition or unfair or deceptive acts or practices and by prohibiting the trade practices so defined or determined.

215 ILCS 5/423. Unfair methods of competition or unfair and deceptive acts or practices prohibited.

(1) No person shall engage in this State in any trade practice which is defined in this Article as, or determined pursuant to this Article to be an unfair method of competition or an unfair or deceptive act or practice in the business of insurance.

(2) No person domiciled in or resident of this State shall engage in any other State, Territory, Province, Possession, Country or District in which he is not licensed or otherwise authorized to transact business in any trade practice which is defined in this Article as, or determined pursuant to this Article to be an unfair method of competition or an unfair or deceptive act or practice in the business of insurance.

215 ILCS 5/424 Unfair methods of competition and unfair or deceptive acts or practices defined. The following are hereby defined as unfair methods of competition and unfair and deceptive acts or practices in the business of insurance:

(1) The commission by any person of any one or more of the acts defined or prohibited by Sections 134, 147, 148, 149, 151, 155.22, 155.22a, 236, 237, 364, and 469 of this Code.

(2) Entering into any agreement to commit, or by any concerted action committing, any act of boycott, coercion or intimidation resulting in or tending to result in unreasonable restraint of, or monopoly in, the business of insurance.

(3) Making or permitting, in the case of insurance of the types enumerated in Classes 1, 2, and 3 of Section 4, any unfair discrimination between individuals or risks of the same class or of essentially the same hazard and expense element because of the race, color, religion, or national origin of such insurance risks or applicants. The application of this Article to the types of insurance enumerated in Class 1 of Section 4 shall in no way limit, reduce, or impair the protections and remedies already provided for by Sections 236 and 364 of this Code or any other provision of this Code.

(4) Engaging in any of the acts or practices defined in or prohibited by Sections 154.5 through 154.8 of the this Insurance Code.

(5) Making or charging any rate for insurance against losses arising from the use or ownership of a motor vehicle which requires a higher premium of any person by reason of his

physical handicap, race, color, religion, or national origin.

Related Statutes:

215 ILCS 5/4(b) (definition of vehicle insurance)

215 ILCS 5/154.5

215 ILCS 5/154.6 (prohibition of improper claims practices,)

215 ILCS 5/155 (remedies for unreasonable and vexatious delay in settling claims).

Rule 60. Relief from Judgment or Order

(a) Clerical Mistakes. Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed in the appellate court, and thereafter while the appeal is pending may be so corrected with leave of the appellate court.(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, Etc. On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3)

fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to grant relief to a defendant not actually personally notified as provided in Title 28, U.S.C., § 1655, or to set aside a judgment for fraud upon the court. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

Jurisdiction

This action in the District Court was under the Sherman Anti-Trust Act and Rico Act, over which the District Court held jurisdiction under 28-U.S.C.-1331. The 7th Circuit Court of Appeals affirmed the appeal on July 21, 2005, denied filing of the Petition for reconsideration with notice served on 8-15-2005 and denied the Motion to recall the mandate on 8-26-2005. This Court thus has Jurisdiction under 28 U.S.C. 1254(1).

STATEMENT OF THE CASE

This appeal is from one of three causes that Hopkins, as a Disabled Individual, has brought in the State and Federal Courts. None, in council's opinion, are frivolous. Hopkins, a disabled person whose only "sin" was attempting to protect his interests as a disabled person and small business owner, had filed this cause instant described as an action under Sherman Antitrust, Rico, and the Commerce clause under 42-U.S.C. 1983.

District Court Judge Jean Scott dismissed this action under Sherman antitrust, Rico, and the commerce clause on grounds the summons were never returned and properly filed by the Plaintiff with the Clerk of the Court, which the Court claimed to be in violation of F.R.P 4. The District Court then went on to rule for dismissal with prejudice the action against State Farm on grounds that the McCarran Ferguson act exempts Insurance Companies from anti-trust actions, and that Hopkins had failed to state a Rico claim. Hopkins did not receive notice of the dismissal until November 2, 2004. Hopkins only recourse was Rule 60 as certain issues had not been clearly raised before the District court for proper appellate review. Hopkins filed a petition for relief.

Hopkins Petition pointed out that Hopkins was denied due process of law by the District Court failing to give notice that the summons were not on file before it's dismissal which Hopkins

could have corrected had he been given notice and the opportunity, with the proof submitted by the copies of the missing summons, and Hopkins pointed out that there had been lack of timely receipt to enable Hopkins to file these matters under rule 59. Hopkins Petition for relief furthermore pointed out that the Court was in error of anti-trust and Rico due to misrepresentation by State Farm and the State of Illinois, and as a result the judgment was an error of law in conflict with this U.S. Supreme Court on these same issues. That Petition for Relief was denied, but with modifications to the judgment that to any reasonable person, constituted in this case a new final judgment. The Seventh Circuit Court of appeals refused to consider that the District Court had issued a new judgment, choosing instead to consider it just as a denial of a petition for relief.

After a discretionary review, the Appeals Court stated that Hopkins had essentially forfeited the right to appeal in this case by filing of that Petition for relief as issues can only be raised on Petition for relief under rule 60 that cannot otherwise be raised on direct appeal, which is in conflict with the 11th Circuit on this same issue, and invalidates this U.S. Supreme Courts policies governing procedure and access to the Courts in re California Motor Transport, which Council believes it is in the public interest to resolve to avoid repetition and needless estoppel bars from a fraud.

THE CASE FACTS

The true nature of the case that is before this Court is not about a car accident, it is about the insurance industry boycotting Hopkins so as to keep his product off the market, using tactics of fraud and intimidation in a business transaction, with state cooperation under a law that intrudes

into commerce without a public safety interest that has left Hopkins unable to own a motor vehicle, unable to engage in commerce, and unable to obtain compensation for his injuries to his person and business, alleged as follows;

(1) Hopkins, a disabled individual who, despite his impairments, has sought to improve his life with limited income from Social Security disability, had developed the device identified as the Electronic fuel Injection Fuel preheater[1] and started a company to market this product on September 11, 2000. This device, which has not yet been properly named, is pending on its patenting on its designs and is restricted to the U.S and European markets for military security reasons. (which concerns the Logistics of military vehicles.) This device, working with the existing equipment of motor vehicles, trucks, and aircraft,

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[1] The name denotes the device type, but is not patentable under this name

only uses engine coolant to preheat the fuel to engine operating temperature while maintaining it in a liquid state, so the fuel never exceeds engine temperature, which after injection into the engine completely vaporizes resulting in complete combustion, reduction in HC and NOX emissions, and a steep improvement of fuel economy, empirically proven by the test vehicle, a 1983 Ford Thunderbird of 4.500 pounds curb weight that prior to the device managed 10 mpg in the city, 15 on the highway, but after the device was installed, established a base city mpg of 28, and highway mileage of 35. This exceeded 100 percent in improvement. The basic designs allow a certified mechanic to install the device, which thereafter is completely safe in operation, and does not damage the engine or its emissions equipment. There never was a real safety issue about this device.

(2) When Hopkins sought financing of the company to market the device in April of 2000, the local banks insisted for unknown reasons on the approval of the device by State Farm Mutual Automobile Insurance Company, clearly the largest and most powerful in the State.

(3) Hopkins contacted that company in May of 2000, which allegedly at first showed enthusiasm for the device because of it power improvement features, only to contact Hopkins two days later by phone stating that the Company objected to the device because it would reduce fuel consumption so drastically in widespread implementation that it would affect oil company profits, which State Farm was heavily invested in.

(4) Hopkins contacted 75 other insurance companies afterward within the State of Illinois in an attempt to obtain a consensus approval, but only one responded in writing, (and because of this straightforward honesty in answering in writing by

that company, is not listed as a defendant even though the refusal stated by that company was identical across the board with all the others)- which matched what State Farm had said in May of 2000. Hopkins then received notice from his insurance carrier at the time that his policy was being terminated with no reason given, and was picked up two days later by the police for not having insurance. *It could not have been just a coincidence.* Over the course of the following two years, Hopkins was required to remove the device when his vehicle was being inspected by the Insurance companies he did business with, and had to change his carriers over 10 times (Hopkins has lost track of all the companies he had dealt with in this period,) due to the State contacting them about Hopkins use of the device.

(4) The State of Illinois, repeatedly contacted about this problem with the insurance industry and the State's baseless interference, made no effort to correct the problem. Hopkins even went to the governor, at the time George Ryan, who stated that the State "*was not interested in Hopkins marketing of the device as it would reduce the states Motor fuel taxes*".

(5) Subsequently thereafter Hopkins was listed as being High risk, and was then required to pay 180.00 per month for liability insurance instead of the $37.00 per month he had been paying, at the order of the Secretary of State, the copy of the letter having been lost but surely is still in the State files.

(6) Hopkins dropped that carrier, took another carrier out of state, concealed the preheater from the carrier, and the identity of the carrier

from the State. Somehow, it is not known how, the State discovered the identity of Hopkins carrier, informed that carrier that Hopkins was high risk, that his rates were to be raised, resulting in Hopkins being cancelled in March of 2002, and was thereafter was not able to obtain insurance anywhere at reasonable rates. The Secretary of State then suspended Hopkins license without notice, and while Hopkins was trying to work the problem of insurance out, became an accident victim on June 11, 2002, his test vehicle having been destroyed by State Farms insured party, and Hopkins disabled body having further spinal impairment and pain.

(7) State Farm Mutual Automobile Insurance Company contacted Hopkins the next day allegedly admitting to full liability for the accident, requesting that Hopkins report his claim as to the accident, his damages, and losses.

Hopkins did report the accident, his losses to his property and business, outlined what steps had to be taken to protect his exposed business interests, and submitted a copy of the solicitation for the grant that was pending, and was Hopkins only source of funding since the local funds and investors were scared off due to the obvious boycott by the industry and is allegedly led by State Farm.

(8) State Farm Mutual Automobile Insurance Company did agree by telephone to provide for the property damage claims to both the vehicle and business to protect Hopkins exposed business interests and disclosed that the matter would be turned over to the local claims adjuster for "finalization".

(9) Randy Mulligan, in his capacity as adjustor, contacted Hopkins the next day by telephone, and then stated by telephone that because Hopkins was violating state law in not

having insurance, and because of Hopkins being prior disabled, State Farm was not liable for any compensation for medical injury claims, that there was no liability for damage claims to Hopkins business, and stated an offer of only $1.152.00 as to property damage to the vehicle, with no salvage of the engine and transmission, which Hopkins either accepted, or otherwise was to forgo any compensation at all.

(10) Hopkins was not provided a rental car by State Farm Mutual automobile insurance company, and lacked resources as a disabled person to obtain a lease vehicle or to replace the destroyed vehicle. Hopkins opposed this offer for over a week without having any transportation, calling and repeatedly disputing to Mulligan the validity of the offer stating his reasons which were clearly to protect his exposed business interests. Hopkins was thus allegedly forced as a disabled person to accept the Settlement terms as dictated

by Mulligan for $1.152.00 and surrender of the entire vehicle, which included the engine and transmission required for the pending grant proposal-Hopkins was not in any position to act otherwise.

(11) Hopkins's grant proposal was subsequently denied, as he did not have the necessary vehicle components to prove his claims that were necessary to obtain the grant based on State Farm Mutual Automobile Insurance Company acts in forcing Hopkins to surrender the entire vehicle, including the device, and with the states subsequent suspension of Hopkins rights to own a motor vehicle, could no longer continue to attempt to conduct business, which was an action of the State without due process of law.

REASONS FOR GRANTING THIS WRIT

(1) Fraud upon the Court as a Resjudicata bar: This cause comes to this U.S. Supreme Court from the 7th Circuit Court of Appeals because there is now a very real possibility that a fraud upon the Court shall obtain resjudicata status in the District Court due to a conflict between the Circuit Courts of Appeal and this Court as to what constitutes proper grounds for relief under federal rule 60. This cause is raising 1st amendment issues as to whether or not a fraud upon the court and a denial of due process by a District Court is proper grounds for relief, and whether or not a District Courts change of its judgment after a Petition for relief raised a denial of due process constitutes a new judgment which can be reviewed by normal appellate review Denovo. Because of this conflict, Hopkins was denied appropriate appellate review, and that Court of Appeals has ignored the issue of fraud and lack of jurisdiction.

The action, now refiled in the State Court and transferred back to the District Courts, is facing dismissal on State Farm's claim of resjudicata that is based on a fraud in a District Court that did not even have jurisdiction, which the Appeals Court has refused to correct. This Appeal therefore raises a question as to a matter of procedural due process that is clearly within the public interest for this Court to address.

Point 1.

This Court has established that Due process requires notice, in re Gault 387 U.S. 1, (1967). The District Court in this case clearly did not serve notice of a correctable fault before taking adverse action against Hopkins, which due to circumstances not wholly in the control of Plaintiff or his council, was not received within the ten days allotted for filing a Motion to reconsider under rule 59.

Hopkins only recourse was a petition for relief filed on November 17, 2004, to raise the issues that could have been raised under rule 59 as of November 1, 2004, as to the issue of the Court having denied due process, lacking jurisdiction, and being in absolute error of law due to misrepresentation that could not be shown to have been raised before the District Court, and would not thus have been clearly available on direct appeal-issues not raised before trial court are not available for review on appeal.

The 11th Circuit, in re Santiago v Wood, 904 F2d 673 (11th Circuit 1990), *has addressed this issue of the delayed receipt of the notice that is required to file a timely rule 59 motion*, (which is a denial of due process,) finding this to be proper grounds for a timely Rule 60 Petition for Relief.

The 7th Circuit completely denies this as proper grounds, the order implicitly stating that *only issues that cannot be directly appealed can be*

raised by Petition under rule 60, citing Bell v Eastman Kodak Co. 214 F.3d 932,934 (7th Circuit 2000). This raises 1st Amendment questions, see Johnson v Avery, 393 U.S. 483, 485 (1969), about the right to raise before the District Court the issue of due process itself, see Degan v United States, 517 U.S. 820 (1996), *because due to this policy of the 7th Circuit, this Courts holding* in re California Motor Transport *has been voided*, encouraging rather than properly discouraging the use of misrepresentation and deceptive practices in the District Courts of the 7th Circuit. See California Motor Transport. 404 U.S. 512-513.

Hopkins has a 1st Amendment right to petition the Appeals Court for redress from the District Courts obvious errors that has been denied without a full and fair hearing on the merits, based on the rules which govern the District Courts and U.S. Courts of Appeal, and are in any case supposedly intended to be administered fairly and

equitably, see in re Bank of Nova Scotia v. United States, 487 U.S. 250, 254-255 (1988) with the primary focus of providing to all parties before the bar "a full and fair hearing on the merits", see in re SMITH v. ROBBINS 152 F.3d 1062.

Point 2

The issue of fraud upon the Court under California Motor Transport. 404 U.S. 512-513 was clearly raised as grounds for relief and was ignored on appeal. This was not harmless error simply because the District Court claimed she was not in error as to the McCarran Ferguson act barring antitrust actions against insurance companies. State Farm had argued in this case that the McCarran Ferguson Act precludes application of the Sherman Act to the alleged boycott, coercion, and extortion conduct because the McCarran Ferguson act exempts Insurance companies from antitrust on grounds these were state regulated businesses.

This was a fraud where Defendant State Farm had the duty to present the law truthfully, and the State was required to present the law as it is, not remain silent. It was not error, it was intentional misrepresentation. The District Court's Judgment reflected that position identically, actually citing state laws that were not affected by this action as they would not in any way be invalidated, impaired, or superceded, strongly indicating to any reasonable person reviewing the record that the District Court had relied only upon that representation of State Farm and the silence of the State.

This was clearly a decision that was reached, or at least unduly influenced, by a misrepresentation that is clearly contrary to that principle expressed by This U.S. Supreme Court in Humana and Hartford v California as follows:

(A) It is now U.S. Supreme Court policy that State Farm and the State of Illinois concealed by silence on the issue from the District Court, that when federal law is applied in aid or enhancement of state regulation, and does not frustrate any declared valid state policy or disturb the State's valid administrative regime, the McCarran-Ferguson Act does not bar the federal action, see Humana, Inc. v. Forsyth, 525 U.S. 299 (1999):

"The federal law at issue, RICO, does not proscribe conduct that the State's laws governing insurance permit. But the federal and state remedial regimes differ. Both provide a private right of action. RICO authorizes treble damages; Nevada law permits recovery of compensatory and punitive damages. We hold that RICO can be applied in this case in harmony with the State's regulation. When federal law is applied in aid or enhancement of state regulation, and does not frustrate any declared state policy or disturb the State's administrative regime, the McCarran-Ferguson Act does not bar the federal action."

(B) It should be noted in that context, like Rico, the Sherman anti-trust act is a federal law which is controlled by the McCarran Ferguson Act, and prohibits any combination by private businesses to restrain trade using tactics "*aimed at compelling 3rd* parties and strangers to involuntarily not engage in the course of Interstate trade except on conditions the combination imposes" see Loewe v Lawlor, 208 U.S. 244 (1908). See Hartford Fire Ins. v. California, 509 U.S. 764 (1993):

"The Sherman Act declares "[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, . . . to be illegal." 15 U.S.C. § 1. The McCarran Ferguson Act provides that regulation of the insurance industry is generally a matter for the States, 15 U.S.C. § 1012(a), and (again, generally) that "[n]o Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance." § 1012(b).

Section 2(b) of the McCarran Ferguson Act makes it clear nonetheless that the Sherman Act applies "to the business of insurance to the extent that such business is not regulated by State law," § 1012(b), and § 3(b) provides that nothing in the McCarran Ferguson Act "shall render the . . . Sherman Act inapplicable to any agreement to boycott, coerce, or intimidate, or act of boycott, coercion, or intimidation." §1013(b)."

(C) As can be noted in re Hartford, State Farms combination with other insurance providers in the boycott is not exempted by the McCarran Ferguson act, and in re Humana, Anti-trust would apply *provided it does not impair or invalidate valid state regulations*. Then there is what happened in the transaction after the accident, which proves malefic intent to harm and maim Hopkins business. "Every contract" as is defined by the Sherman Anti Trust act would also implicitly include the settlement agreement as a "verbal contract" that Defendant State Farm imposed by intimidation and coercion upon Plain

-tiff, where Plaintiff was forced to turn over the principal asset of his business needed by his business for advancing the business, as a condition for compensation of *"just $1.152.00."* This agreement obtained by State Farm on it's face could and should be seen for what it was, as "intimidation and coercion of a disabled person with intent to injure his business", as Plaintiff had made it very clear to Defendant State Farm that as a disabled small business owner he needed the engine and transmission removed from the wreck as it represented 28 months of field testing of the company product, and was essential to the pending grant.

Defendant State Farm Mutual Automobile Insurance Company clearly had no legitimate business reason for such action, this conduct was contrary to the intent and purpose of Illinois law regulating insurance, but is not known to be in any

way actionable in a state court, and had allowed the party identified as Mulligan to force Plaintiff to meet his demands, either from indifference or malevolent intent, which is a tort in other states, see *United States Fidelity & Guaranty Co.* v. *Peterson*, 91 Nev. 617, 620, 540 P.2d 1070, 1071 (1975). An action under Sherman Anti-trust would not in any way invalidate, supercede, or impair the States regulation of the Insurance industry, while an action under Anti-trust would enhance the intent, effect, and purpose of the state's regulations. State Farm, and the State of Illinois, when before the District Court had a duty to properly present this issue truthfully. By State Farm misrepresenting an exemption that did not actually exist, raising by implication a Parker v Brown exemption, and the State refusing to tell the Court the law the District Court was misled to believe State Farm was correct. There was an abuse of trust.

The District Courts judgment as to Sherman anti trust creates a paradox, in that contrary to both Federal law and U.S. Supreme Court holdings on that law, the District Court, which properly did not have jurisdiction, has created an exemption from federal law in the federal Courts to just this one insurance company, protecting it from its violation of federal law as to its boycott conduct towards just this one company, Galaxy Innovative Technology, and denying Hopkins DBA Galaxy Innovative Technology, fair and meaningful access to the Federal courts on his valid claims. As neither the District Court or the Court of Appeals has the power to overrule the U.S. Supreme Court, the decision as to anti-trust by the District Court, once it was pointed out to be in conflict with this Courts policies, is clearly an abuse of power in re Bank of Nova Scotia v. United States 487 U.S. 250 254-255, entitling Hopkins to relief, See California Motor Transport. 404 U.S. 512-513.

CONCLUSION

The State of Illinois believes that it can legitimately intrude directly into intrastate commerce for the benefit of a favored private industry because the State was acting "under it's police powers" in regulating what is defined in Illinois as "a privilege", not a right, thus the State believes the State can do as it chooses, contrary to U.S. Supreme Court policy set forth in Sherbert v. Verner, 374 U.S. 398 (1963). The State enacted the Mandatory Automobile insurance act that directly intrudes into commerce for the benefit of the insurance industry and detriment of consumers.

State Farm has been exploiting this law, (along with other unnamed business within and without the state involved in the business of insurance,) to maintain a viciously effective boycott against Hopkins, which due to the lack of due process constraints in the law, has made Hopkins unable to correct the problem, and unable

to engage in commerce. This law at the heart of this antitrust question now before this Court, is creating a deadly constitutional conflict, in re West Lynn Creamery v. Healy, 512 U.S. 186 (1994) and in re Proprietors of Charles River Bridge v. Proprietors of Wilson Bridge 36 U.S. 420 (1837):

"The continued existence of a government would be of no great value, if, by implications and presumptions, it was disarmed of the powers necessary to accomplish the ends of its creation, and the functions it was designed to perform, transferred to the hands of privileged corporations."

This law cannot be the basis for a "Parker exemption", see Parker v. Brown, 317 U.S. 341 (the only way to justify the Courts judgment) as it is contrary in both spirit and intent to CANTOR v. DETROIT EDISON CO., 428 U.S. 579 (1976) because private businesses, engaged in the business of insurance, have been delegated by Illinois full constructive control of consumers use of State

roads, a State to private sector power transfer that is claimed herein to be flat out forbidden to the States, see ASSOCIATED INDUSTRIES OF MISSOURI et al. v. LOHMAN, 114 S. Ct. 1815, 128 L. Ed. 2d 639 (1994). This law is being used for prohibited purposes.

Furthermore, Illinois mandatory insurance law does not even require a hearing to determine fault, it mandates the automatic suspension and revocation of a consumers privilege arising from any combination of insurance companies refusing to provide coverage, regardless of reason, and makes no contribution whatsoever to actual highway safety, a fact that was already admitted by State Farm See State Farm Mutual Automobile Insurance Co v Universal Under-writers Group, 285 Ill App. 3d 115, 120-21, 674 N.E. 2d 52, 55-56 (1996). Hopkins points out that Due Process is a basic requirement that requires the State must have a hearing on the suspension of driving

privileges of any consumer because the provider(s) chose to deny insurance that is consistent with "the general proposition that relevant constitutional restraints limit state power to terminate an entitlement whether the entitlement is denominated a "right" or a "privilege." Such a due process remedy does not exist in Illinois.

Council points out there are just some aspects of Intrastate and interstate commerce where Congress had intended to leave the parties free from regulation by the States as well as from itself: see Great A&P Tea Co. v. Cottrell, 424 U.S. 366, 370 -371 (1976). The McCarran Ferguson act was never intended to allow such State and private business collusions to operate in violation of federal law protecting commerce for anti trust purposes without triggering Sherman Anti-trust, See United States v. South-Eastern Underwriters Assn., 322 U.S. 533 (1944).

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This raises the question as to whether or not Hopkins is entitled to relief from this erroneous judgment to prevent undue prejudice and estopple of valid claims by fraud in his refiled action, under California Motor transport.

Hopkins is entitled to a fair trial before an impartial court on the true merits of his issues.

Hopkins prays that this Court shall grant certiorari, or whatever relief this Court finds appropriate.

OATH AND AFFIRMATION

We affirm that the foregoing is true except as to statements made upon information and belief, and as to those, We believe them to be true. Witness our hand under the penalties of perjury this _____ day of November, 2005
Witness our Hand;

Glenn J. Hopkins

William Shaffer

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Appendix A
CV-04-3022

Plaintiff;
Glenn J. Hopkins, DBA Galaxy Innovative Technology, on behalf of those similarly situated,

VS

Defendants;
The State of Illinois, Secretary of State Jesse White, State Farm Mutual Automobile Insurance Company, unknown businesses engaged in the business of Insurance within and without the State of Illinois, and the estate of Leroy Neff,

Opinion of the U.S. District Court
Judge Jean Scott
Order of Dismissal October 21, 2004

This matter comes before the court on Defendant Illinois secretary of state Jesse White's motion to Dismiss (d/e 30) and Defendant State Farm Mutual Automobile insurance company's (State Farm) Motion to Dismiss (d/e 29 & 31). For the reasons set forth below. Both motions to dismiss are allowed, the remaining claim in Count v against Defendant Leroy Neff is dismissed for lack of subject matter Jurisdiction.

Statement of facts

For the purposes of the motion to Dismiss, the Court must accept as true all well pleaded

factual allegations contained in the complaint and draw inferences in the light most favorable to Hopkins. Hager v City of West Peoria 84 F.3d 865, 868-869 (7th Cir. 1996) Covington Court ltd v Village of Oak brook, 77 F.3d 177, 178 (7th Cir. 1996). The complaint should not be dismissed unless it appears that Hopkins can prove no set of facts that would entitle him to relief. Doherty v City of Chicago, 75 F.3d 318, 322, (7th Cir, 1996).

Hopkins alleges that 635-ILCS-3/707 of the Illinois Insurance code administered by Defendant Jesse White as Illinois secretary of state violates the commerce clause of the United States Constitution. U.S. Const. Art. I /8cl 3. Hopkins asks the Court in Counts I, II, III, and IV to enjoin the enforcement of 3/707 and to declare 3/707 unconstitutional under the Americans with Disabilities Act, the Fourteenth Amendment, the Commerce Clause, and 42-U.S.C. 1983. Count V alleges that Hopkins Company, Galaxy Innovative Technologies, was developing a device called an electronic Fuel injection fuel preheater (Device) designed to improve fuel economy. Hopkins was driving a test vehicle, (a 1983 Ford Thunderbird,) on June 11 2002 equipped with the device. Hopkins was stopped at an intersection in Springfield Illinois at 2:17 pm. Defendant Leroy Neff negligently operated his vehicle and struck the rear of Hopkins test vehicle, totally destroying

the test vehicle and causing injury to Hopkins spine. Hopkins seeks damages from Neff for these injuries. Hopkins is a resident of Springfield Illinois, Second Amended Complaint (d/e 28) at 7. Neff is also a resident of Springfield Illinois. Id at 9. Counts VI and VII allege that Defendant State Farm violated the Sherman antitrust act and the Clayton act, 15 U.S.C. 1-2, 12 et Seq. Neff's automobile was insured by State Farm. Hopkins filed a claim with State Farm after the June 11, 2002 accident.

Hopkins asked for compensation for the loss of his test vehicle. His reasonable medical claims, and assistance in preparing paperwork and securing the engine and the transmission of the test vehicle. Hopkins had been testing the device on the vehicle for 28 months. Hopkins needed the engine and transmission to show the effect of his device on the vehicle in order to secure a grant for marketing the device.

State Farm refused to settle his claim for the property damage to the test vehicle unless Hopkins surrendered the entire vehicle including the engine and transmission. He alleges that State Farm coerced and extorted him into surrendering his entire vehicle including the engine and transmission as a condition of settling his claim. State Farm subsequently denied any liability for Hopkins personal injury or any injury to his business.

He alleges in Count VI that State Farms actions violated section 2 of the Sherman Antitrust act, 15 U.S.C. sec 2. He alleges in Count VII that State Farms actions violated the Clayton Act, 15 U.S.C. sec 12 et seq. Counts VIII and IX allege that State Farm violated the Racketeer Influenced and corrupt organizations act. (RICO) 18. U.S.C. sec 1962 et seq. He alleges that State Farm, American Family Insurance Company, and other insurance companies have investments in oil resources that would be negatively affected by the wide scale use of the device by consumers.

These Insurance companies engaged in a group boycott by refusing to ensure vehicles equipped with the device. They did this to stop the introduction of the device into the market and so protect their interests in oil resources. Hopkins alleges that this boycott was an unfair business practice. Hopkins further alleges that State Farm initially admitted full liability for the June 11 2002 accident. State Farm denied his request for a rental car. Hopkins alleges State Farm committed two acts of wire fraud, Corporate misrepresented by telephone that it had agreed to provide for the property damage claims to both the vehicle and business so as to protect Plaintiffs injured business interests when in fact there was not intent to do so. And: (State Farm representative) Randy Mulligan, in his capacity as adjuster, a semi autonomous management position, subsequently

misrepresented by telephone that because Plaintiff was violating the law in not having insurance, and because of being prior disabled in another car accident that :

A state farm was not liable for any compensation for medical injury claims, and:

B that there was no liability for damage claims to plaintiffs (sic) business, and

C Mulligan state that the liability of State Farm extended only to the property damage to the vehicle itself under Blue Book value, not as a classic car, and made the offer on only 1.152.00 to settle the loss claim of the vehicle.

D Contrary to the common and usual practice of businesses engaged in the business of Insurance allowing by back of salvage, Mulligan then conditioned payment of this sum with the Plaintiffs surrender of the complete vehicle, with mulligan stipulating that Plaintiff could not salvage the engine and transmission which Plaintiff either accepted, or otherwise forgo any compensation what so ever. Second amended complaint (d/e 28) at 25-26 (*emphasis in the original)

Hopkins further alleges that it is a common Practice in the insurance industry to use intimidation, fraud, and coercion as negotiating tactics. State Farms use of those tactics forced Hopkins to surrender the test vehicle which injured

his business. He alleges that these acts violate RICO. 18 U.S.C. sec 1962(c).

Count IX alleges both a state law claim and a Rico Claim. Count IX alleges the same facts as Count VIII, except that Count IX also alleges that State Farm engaged in deceptive business practices and breached its implied covenant of good faith and fair dealing in settling Hopkins claim and by refusing to provide insurance to vehicles equipped with his device. (Foot note 1, as discussed infra, the Court lacks jurisdiction over these state claims. The Court does not address whether allegations state a valid claim under Illinois law.) He also alleges that State Farms acts violate RICO. 18 U.S.C. sec 1962 (c)

Upon filing the original complaint in this case, Hopkins did not secure any summonses. He also never served any defendant with a summons, nor did he secure a waiver of service from any defendant. See Fed. R. Civ. P. 4.

Jesse White filed a Rule 12 (b)(2) Motion to dismiss for lack of personal jurisdiction. State Farm filed a rule 12 (b)(6) Motion to Dismiss for failure to state a claim. Neff has a filed an answer.

ANALYSIS

1. Jesse White, Secretary of State.

This Court lacks personal jurisdiction over Jesse White. Within 120 days of filing the original complaint, a plaintiff must serve a defendant with a summons and a copy of the complaint, or secure

a waiver of service, in order to secure personal jurisdiction over the Defendant. Fed. R. Civ. P. 4.m Hopkins did not do this. This Court therefore lacks personal jurisdiction over White. Hopkins argues that this Court has personal jurisdiction over Jesse White because Hopkins served the Illinois Attorney general. He Cites no authority for this proposition. Further, he did not serve the Illinois Attorney General. No summons was issued or served on the Illinois attorney general.

No waiver of service was secured. This Court lacks jurisdiction over Jesse White. The claims against Jesse White set forth in Counts I, II, III, and IV are therefore dismissed.

II. State Farm

Hopkins Sherman Antitrust Act and Clayton Act claims in Counts VI and VII are barred by the McCarran Ferguson act. 15 U.S.C. sec 1011 et seq. The McCarran Ferguson act bars the application of the Clayton act and Sherman antitrust act to insurance companies to the extent that they are regulated by State Law. 15 U.S.C. sec 1012 Counts VI and VII allege that State Farm violated the Sherman Antitrust Act and the Clayton Act by using misrepresentations, coercion, and intimidation to force Hopkins to accept an unfair settlement of his claim arising from the June 11 accident. The process of settling insurance claims in Illinois is regulated by the Illinois Insurance

Code. Sec 215 ILCS 5/4(b) (definition of vehicle insurance) 215 ILCS 5/154.5 154.6 (prohibition of improper claims practices,) and 215 ILCS 5/155 (remedies for unreasonable and vexatious delay in settling claims). Hopkins remedy is therefore under Illinois law, he cannot pursue claims under either the Sherman Antitrust Act or the Clayton Act. 15 U.S.C. sec 1012.

Hopkins also fails to allege a Rico Claim in both Counts VIII and IX. To State a RICO claim, a plaintiff must allege the conduct of an enterprise through a pattern of racketeering activity. Midwest Grinding Co. Inc. v Spitz, 976 F.2d 1016, 1019 (7th Cir. 1992). A pattern of racketeering activity consists of predicate acts of specific crimes listed in the statute. 18 U.S.C sec 1961 (1) To constitute a pattern of racketeering, the predicate acts must e related to one another and must pose a threat of continued criminal activity. H.J. Inc. v Northwestern Bell telephone Co, 492 U.S. 229, 239 (1989). The continuous pattern of criminal activity may be either "closed ended" or "open ended". Midwest Grinding Co. Inc. v Spitz, 976 F.2d at 1022-23.

To allege a close ended pattern of racketeering activity, Hopkins must allege a series of related acts that occurred for a substantial period of time. To allege an open-ended pattern, Hopkins must allege either (1) a specific threat of repetition, (2) predicate acts that are part of an ongoing regular

way of doing business, or (3) a long term association that exists for criminal purposes. Id.

Hopkins alleges that State Farm engaged in a group boycott, wire fraud, deceptive and unfair business practices, coercion, intimidation, and a breach of the duty of good faith and fair dealing. Of these, only wire fraud is a RICO predicate act. 18 U.S. C. sec 1961(1). Thus, Hopkins must allege acts of wire fraud that establish a pattern of racketeering activity.

Fraud must also be alleged with particularity. Fed R. Civ. P. 9(b). As quoted above, Hopkins alleges only two acts of wire fraud with any particularity. The alleged fraudulent acts were designed to induce Hopkins into accepting State Farms settlement proposal. The alleged fraud was completed when Hopkins accepted the settlement.

These two acts of wire fraud do not constitute a pattern of racketeering activity. There were only two acts which occurred over a short period of time and only involved one victim, Hopkins. They lack the continuity necessary to constitute a threat of continued criminal activity. Midwest Grinding Co. Inc. v Spitz, 976 F.2d at 1023-24. Morgan v Bank of Waukegan 804 F.2d 970, 975. (7th Cir. 1986). Hopkins, thus, fails to state a claim under RICO. The RICO claims in Counts VII and IX are dismissed.

The remaining claims in Counts V and IX are based on state law. This Court only has subject matter jurisdiction over these claims if Hopkins can establish diversity jurisdiction. 28 U.S.C. sec 1332. Diversity Jurisdiction only exists if Hopkins's citizenship is diverse from all defendants at the time the case was filed. American Nat. Bank and Trust Co of Chicago v Bailey, 750 F.2d 577, 582 (7th Cir. 1984).

Hopkins and Neff are not diverse because both are residents of Illinois. Since Hopkins and the Defendants are not completely diverse, this Court lacks subject matter jurisdiction over Count V and the state claim in Count IX. These claims are dismissed for lack of subject matter jurisdiction. Therefore, Defendant Jesse White's Motion to dismiss (d/e 30) is allowed, and Defendant Sate Farm Mutual Automobile insurance company's (State Farm) Motions to Dismiss (d/e 29 & 31 are allowed.

The claims against Jesse White are dismissed without prejudice for failure to prosecute. The claims against State Farm in Counts VI, VII, and VIII, and the Rico claim in Count IX are dismissed with prejudice. The claims against Leroy Neff in Count V and the State Law claims against State Farm in Count IX for deceptive business practices and breach of the implied covenant of good faith in fair dealing are dismissed for lack of subject matter jurisdiction.

All pending motions are denied as moot, This case is closed. It is therefore so ordered . dated October 20, 2004.

APPENDIX B

CV-04-3022

Plaintiff;
Glenn J. Hopkins, DBA Galaxy Innovative Technology, on behalf of those similarly situated,

VS

Defendants;
The State of Illinois, Secretary of State Jesse White, State Farm Mutual Automobile Insurance Company, unknown businesses engaged in the business of Insurance within and without the State of Illinois, and the estate of Leroy Neff,

2nd Opinion of the U.S. District Court
Judge Jean Scott
Order denying the Petition for Relief
December 23, 2004

This matter comes before the Court on Plaintiff Glenn J. Hopkins Petition for relief from Judgment Federal Rule 60 B(1) and (6) (d/e 43) and Plaintiff's motion for leave to amend the complaint (d/e 43) This Court entered judgment on October 21, 2004 which (1) dismissed without prejudice Hopkins claims against Defendant Illinois Secretary of State Jesse White, (2) dismissed with prejudice Hopkins federal claims against Defendant State Farm Insurance companies (state Farm) and (3) dismissed for lack of subject matter jurisdiction the claims against Defendant

Leroy Neff, and any state law claims against State Farm. On November 22, 2004, Hopkins filed his Petition for Relief from Judgment pursuant to Federal rule of civil procedure 60 (b)(1) and (6). For the reasons set forth below, the motion is denied. Rule 60(b) is an extraordinary remedy designed to address mistakes attributable to special circumstances and not merely erroneous applications of law. Russell v Delco Remy Div. Of General Motors Corp. 51 F.3d 746, 749 (7th Cir. 1995). Hopkins has presented no special circumstances that merit relief under Rule 60(b).

This Court dismissed the claims against Jesse White with prejudice because Hopkins failed to serve him with a summons and a copy of the complaint. Hopkins argued that he properly served White because he served the Illinois Attorney General. This is incorrect. This Court must have personal jurisdiction over the defendant. The Court acquires personal jurisdiction over a defendant when the Plaintiff serves a summons issued by the Clerk of the Court in accordance with the rules. Fed R. Civ. P. 4. Hopkins did not do this. He did not serve a summons on White. (Footnote 1. Further, the summons form that he served on the Illinois attorney general was a form that was not issued by the Clerk of the Court. Thus the document was not a proper summons. Fed. R. Civ. P. 4(a) Hopkins therefore did not properly serve the Illinois attorney general either.) The Court

therefore lacked personal jurisdiction over White. The dismissal of the claims against White without prejudice was proper.

Hopkins argues that the Court erred in dismissing the claims against State Farm because the Court misapplied the Sherman Act, the Clayton Act, the McCarran Ferguson act, and the Racketeer Influenced and corrupt Organization act, 15 U.S.C. sec 1-2, 15 U.S.C sec 12 et seq, 15 U.S.C, sec 1011 et seq, and 18 U.S.C. sec 1962 et seq. He thus argues that the Court made errors of law.

An error of law is not a proper basis for relief under rule 60(b). Russell, 51 F.3d at 749. Hopkins should have filed a rule 59(e) motion if he wished to assert an error of law. A rule 59(e) motion must be filed within ten days of entry of the Judgment. The judgment was entered on October 21, 2004. Hopkins filed his motion more than a month later, on November 22, 2004.

Hopkins argues that he was unable to file a rule 59(e) motion because his attorney was out of town when the Court issued its October 21, 2004 order, and did not return to read his mail until it was too late to file a rule 59(e) motion. Hopkins Council submitted an affidavit in which he avers that he went to Florida on October 12, 2004, to assess hurricane damage to a condominium that he owned. The Court entered its Order on October 21, 2004 and the clerk mailed a copy to Hopkins council.

The Court mailed the order because Hopkins Council is not a registered user of the U.S. Courts electronic filing system. Hopkins Council did not return to Illinois until November 1, 2004, and did not read his mail until November 2, 2004. He says that he did not have time to file a rule 59(e) motion at that time. Plaintiffs response to State Farms Reply and request for sanctions(d/e 51) at 10-11, Affidavit of William Shaffer.

An attorneys failure to read his mail is not excusable neglect. An attorney with an active practice should arrange for someone to check his mail when he is out of town for an extended period of time. Hopkins council did not do this. Further, upon his return, Hopkins council still had 2 days to file a rule 59(e) motion. Week ends are excluded when calculating the 10 day period in which to file a rule 59(e) motion. Fed R. Civ. P. 6(a) Excluding weekends, Hopkins had until November 4, 2004 to file a rule 59(e) Motion. Hopkins council thus still had some time to file a rule 59(e) motion when he read his mail on November 2, 2004.

Even if Hopkins council's failure to check his mail during his absence constituted excusable neglect, the Court still would not grant the requested relief. The Courts decision is legally correct for the reasons stated in the October 21, 2004 order. Contrary to Hopkins protestations, the

Court did not make any errors of law. Hopkins rule 60(b) motion is denied. Because the judgment remains final, Hopkins cannot amend his pleadings. Piggie Intern. Inc. v Miller, 966 F.2d 1178, 1179 (7th Cir. 1992) Therefore the motion for leave to amend complaint is also denied.

Therefore, Plaintiffs petition for relief fro Judgment Federal Rule 60(b)(1) and (6) (d/e 43) and Plaintiffs motion for leave to amend the complaint (d/e 43) are denied. All other pending motions are denies as moot. This case is closed. It is so ordered.

December 22, 2004.

Appendix C

Plaintiff Appellant;
Glenn J. Hopkins, DBA Galaxy Innovative Technology, on behalf of those similarly situated,

VS

Defendants Appellee;
The State of Illinois, Secretary of State Jesse White, State Farm Mutual Automobile Insurance Company, unknown businesses engaged in the business of Insurance within and without the State of Illinois, and the estate of Leroy Neff,

Mandate of USAP7 No. 05-1105
In the Seventh Circuit Court of Appeals
Submitted July 21, decided July 21, 2005.
ORDER

After colliding with Leroy Neff in a car accident, Glenn Hopkins sued Neff, Neff's insurer, State Farm Insurance, and Illinois Secretary of State Jesse White.

According to Hopkins, the vehicle he was driving at the time of the accident, a 1983 Ford Thunderbird equipped with an "electronic Fuel Injection Preheater" device designed to improve fuel economy is a prototype that he was testing for his company, Galaxy Innovative technology. After the accident, State Farm refused to reimburse Hopkins for damages to the "prototype" because he was driving without insurance in violation of

Illinois law. In his complaint, Hopkins alleged that Illinois insurance law violates the commerce clause by requiring him to enter into a private contract for insurance, and that State Farm violated the Sherman antitrust act, 15 U.S.C. sec 2, the Clayton act, 15 U.S. C. sec 12 et seq, and the Racketeer and corrupt organizations act, 18 U.S.C. sec 1962. et Seq, by refusing to reimburse him for damage to the prototype and declining to insure the vehicle in order to limit the development of alternative fuels

On October 21, 2004 the District Court granted the Defendants respective motions to dismiss. The Court determined that Hopkins had failed to serve Jesse White in compliance with Federal Rules of Civil procedure 4m., and that Hopkins Anti-trust claims were barred by the McCarran Ferguson Act. 15 U.S.C. sec 1011 et seq. The Court also decided that Hopkins had failed to state a Rico Claim as the two alleged acts of wire fraud on the part of State Farm do not constitute a pattern of Racketeering activity.

On November 22, 2004, Hopkins filed a post judgment motion pursuant to Federal Rule of Civil procedure 60 (b).

(Footnote 1, After examining the briefs and record, we conclude that oral argument is not necessary. Thus the appeal is submitted on the briefs and the record. See Fed. R. App. P 34 (a)(2).)

In the motion, Hopkins challenged the District Courts legal conclusions on the antitrust and Rico claims and argued that the District Courts dismissal of his claims against Jesse White for lack of service violated his right to due process. The Court denied the motion concluding that there were no circumstances presented that would merit relief under rule 60 (b) On January 10, 2005, Hopkins filed his notice of Appeal.

Because Hopkins filed his notice of appeal more than thirty days after the entry of the underlying judgment, we have jurisdiction to review only the district Courts denial of his rule 60(b) motion. See eg Castro v Bd of Education, 214 F.3d 932-934 (7th Cir. 2000) Rule 60 (b) allows a district court to relieve a party from judgment on the grounds of mistake, inadvertence, excusable neglect, newly discovered evidence, fraud, or any other reasons justifying relief from the operation of the judgment. However *rule 60 (b) allows modification to a judgment only on grounds unavailable on direct appeal,* see Bell v Eastman Kodak Co, 214 F.3d 798-801 (7th Cir. 2000). In his motion, Hopkins did not invoke any of the permitted basis for rule 60 (b) relief, instead he challenged the district Courts legal conclusions in the underlying judgment. *But this is precisely the kind of argument that should have been made on direct appeal,* Accordingly, the judgment of the district Court is Affirmed.